

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN WILSON,)
)
 Plaintiff,) No. _____
)
 -against-) COMPLAINT
)
 FEDERAL BUREAU OF INVESTIGATION,)
)
)
 Defendant.)
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Plaintiff John Wilson, by his attorney David B. Rankin of Beldock, Levine & Hoffman, LLP for his complaint, does hereby state and allege:

Preliminary Statement

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. §§552 *et seq.*, seeking the production of agency records improperly searched for by Defendant United States Department of Justice (“DOJ”), specifically its component the Federal Bureau of Investigation (“FBI”) (“Defendant”), in response to requests properly made by Plaintiff.
2. Plaintiff seeks an injunction requiring defendant to release the requested records.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction of the FOIA claim and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(b). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.
4. Venue is proper as the records exist on databases within this district.
5. The FBI has partially responded to Plaintiff’s request and denied Plaintiff’s appeal. Plaintiff has exhausted all administrative remedies pursuant to 5 U.S.C. § 522(a)(6)(c).

Parties

6. John Wilson (“Plaintiff”) is a United States citizen and the requester of the records.
7. Defendant FBI is a department of the executive branch of the U.S. government and an agency within the meaning of 5 U.S.C. §§ 551(1) & 552(f)(1). Defendant FBI is a component of DOJ.

Factual Background

8. On March 26, 2014, Plaintiff submitted a FOIA request to the Federal Bureau of Investigation via email for a copy of all agency records concerning, naming, or relating to Plaintiff, including but not limited to all potentially responsive main and cross-reference files. The request is attached hereto as Exhibit 1.
9. On September 25, 2014, Plaintiff received a response from David M. Hardy, Section Chief, Record/Information Dissemination Section, Records Management Division of the FBI. Hardy indicated that 21 pages were reviewed and released 10 pages with redactions. The response is attached hereto as Exhibit 2.
10. The pages included a February 10, 2006 letter from the Initial Processing Unit, Internal Investigations Section, Inspection Division of the FBI, to counsel for Plaintiff, responding to Plaintiff’s January 17, 2005 letter alleging misconduct by FBI personnel. Other pages include intra-agency emails on the topic of Plaintiff’s letter and the resulting investigation; OIG’s letter to Charlene B. Thornton, Assistant Director, Inspection Division of the FBI with their conclusions regarding the OIG complaint; a letter from Plaintiff following up on his January 17, 2005 letter; Plaintiff’s original January 17, 2005 letter; and a list summary response entry for Mr. Wilson’s complaint. Attached hereto as Exhibit 3.

11. The defendant's production in response to the Plaintiff's request was inadequate. Defendant explained their limited production by stating that they did not find records that the named agents listed in the request were employees of the FBI. Plaintiff has had prior conversations with the named individual in which they told Plaintiff that they were employed by the FBI and in one case showed Plaintiff an FBI identification.

12. Defendant incorrectly limited their search to special agents of the FBI. A proper and adequate search by the FBI would have returned records of the employment or contracts or contacts with the named individuals or records of communications with these named individuals, person who were operating on behalf of the FBI or others in the Department of Justice.

13. The search ran by the defendant did not search all the available databases for references to Mr. Wilson.

14. On November 6, 2014, Plaintiff appealed the FBI's September 25, 2014 production, disputing the adequacy of the FBI's search for records responsive to his FOIA request. Attached hereto as Exhibit 4.

15. On February 23, 2015, Christina D. Troiani, Attorney-Advisor for Sean O'Neill, Chief, Administrative Appeals Staff, Office of Information Policy, U.S. Department of Justice responded to Plaintiff's appeal and affirmed the FBI's actions on Plaintiff's FOIA request. Ms. Troiani of the Administrative Appeals Staff stated she had determined the FBI had conducted an adequate and reasonable search for records responsive to Mr. Wilson's FOIA request. The letter is attached hereto as Exhibit 5.

16. On October 24, 2019, Plaintiff submitted a new FOIA request to the FBI through their online portal, again seeking a copy of all agency records concerning, naming, or relating to

Plaintiff. Plaintiff does not possess a copy of this request as it was submitted directly through the FBI's online portal for such FOIA requests.

17. On October 29, 2019, David M. Hardy, Section Chief, Record/Information Dissemination Section, Information Management Decision, Federal Bureau of Investigation, U.S. Department of Justice responded to Plaintiff's request. Mr. Hardy stated that the FBI had released all relevant records to Mr. Wilson in response to his previous request, and that no additional records could be located. Attached hereto as Exhibit 6.

18. On Feb 18, 2020, Plaintiff appealed the FBI's October 26, 2019 conclusions, again disputing the adequacy of the FBI's search for records responsive to his FOIA request. Attached hereto as Exhibit 7.

19. On March 21, 2020, Christina D. Troiani, Associate Chief, for Matthew Hurd, Acting Chief, Administrative Appeals Staff, Office of Information Policy, U.S. Department of Justice responded to Plaintiff's appeal and affirmed the FBI's actions on Plaintiff's FOIA request. Ms. Troiani of the Administrative Appeals Staff stated she had determined the FBI had conducted an adequate and reasonable search for records responsive to Mr. Wilson's FOIA request. The letter is attached hereto as Exhibit 8.

Cause of Action

20. Defendant's failure to conduct an adequate search for the records sought by the Request violates the FOIA, 5 U.S.C. § 552(a)(3)(A)-(D), and defendant's corresponding regulations.

Request for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Order Defendant to conduct a thorough search for all records responsive to Plaintiff's Request and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to Plaintiff's Request;

- B. Issue a declaration that Plaintiff is entitled to disclosure of the records responsive to Plaintiff's Request;
- C. Order Defendant to disclose all non-exempt records responsive to Plaintiff's Request in its entirety, as well as all non-exempt portions of responsive records;
- D. Order defendant to promptly provide an index pursuant to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), and its progeny, inventorying all responsive records and itemizing and justifying all withholdings of responsive documents;
- E. Enjoin Defendant from continuing to withhold any and all non-exempt records or portions thereof responsive to Plaintiff's Request;
- F. Immediately process all records responsive to the Request;
- G. Award plaintiff reasonable attorneys' fees and costs pursuant to incurred in this action; and 5 U.S.C. § 552(a)(4)(E);
- H. Grant such other relief as the Court may deem just and proper

Dated: December 8, 2020
New York, New York

Respectfully submitted,

By: _____


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